

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

ROSALYN KENDALL,

Plaintiff,

v.

USAA INSURANCE AGENCY, INC.

Defendant.

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CIVIL ACTION NO. 2:06 CV 676-ID

BRIEF IN SUPPORT OF MOTION TO DISMISS

COMES NOW the Defendant designated as USAA Insurance Agency, Inc., whose true and correct name is United Services Automobile Association ("USAA") and hereby submits this brief in support of its motion to dismiss and states as follows:

1. Affirmative defense #12 in Defendant's Answer avers that the claims against this Defendant are due to be dismissed as this court lacks subject matter jurisdiction.

2. Although the plaintiff did not set forth the reasons why this court has jurisdiction of the subject matter of this lawsuit, the only conceivable basis would be that the court has jurisdiction under 28 U.S.C. §1332.

3. The plaintiff avers in her complaint that she is an adult resident of Elmore County, Alabama. USAA is a reciprocal interinsurance exchange. USAA has members or subscribers in all 50 states of the United States of America, including the State of Alabama. (Exhibit 1).

4. The identical issue before this court was addressed in *Bitinas v. Roback*, 2005 W.L. 327137 (D.Conn. 2005). In *Bitinas*, the court granted USAA's motion to dismiss for lack of subject matter jurisdiction. The *Bitinas* court acknowledged that USAA, as a

reciprocal interinsurance exchange, is a citizen of each and every state in which it has a member. Given the fact that USAA has members in all 50 states, including the state in which the plaintiff resided, there was no diversity between the parties and the plaintiff's complaint was due to be dismissed.

5. The same facts are before this court as were before it in the Britinas court. The plaintiff in this case is an Alabama resident. USAA has members in all 50 states, including Alabama. Incidentally, one of those members is the plaintiff herself. Given that, there is not diversity between the parties and this matter is due to be dismissed, as this court does not have subject matter jurisdiction.

WHEREFORE, premises considered, USAA respectfully requests that this court enter an order granting its motion to dismiss, as this court lacks jurisdiction over the subject matter of this action.

Done this the 6th day of September, 2006.

Respectfully submitted,

/s/ W. Evans Brittain

W. Evans Brittain

Attorney for USAA

OF COUNSEL:

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CERTIFICATE OF SERVICE

I hereby certify that on this August 29, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Richard F. Horsley, Esq.
Lindsey O. Hill, Esq.
rfhala@cs.com

/s/ W. Evans Brittain

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STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

AFFIDAVIT OF JOANNE JANICKI

Before me, the undersigned authority, a Notary Public in and for said state and county, personally appeared JOANNE JANICKI, and after being duly sworn, under oath, deposes and says the following:

1. I am a litigation manager for United Services Automobile Association ("USAA"). USAA is a reciprocal interinsurance exchange. USAA has members or subscribers in all 50 states of the United States of America, including the state of Alabama, where the plaintiff resides.

"The above information is true and correct to the best of my knowledge and belief."

Joanne Janicki
JOANNE JANICKI

SWORN TO and SUBSCRIBED before me on this the 29 day of August, 2006.



Steven A. Strickland
My Commission DD267408
Expires March 27 2006

Steven A. Strickland
NOTARY PUBLIC

My commission expires: _____

EXHIBIT

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